



STATUTORY INSTRUMENTS.

**S.I. No. 362 of 2010**

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HEALTH SERVICE EXECUTIVE EMPLOYEE SUPERANNUATION  
SCHEME 2010

**(Prn. A10/1078)**

HEALTH SERVICE EXECUTIVE EMPLOYEE SUPERANNUATION  
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S.I. No. 362 of 2010

HEALTH SERVICE EXECUTIVE EMPLOYEE SUPERANNUATION  
SCHEME 2010

The Health Service Executive, in exercise of the power conferred by section 23 of the Health Act 2004 (No. 42 of 2004), with the approval of the Minister for Health and Children given with the consent of the Minister for Finance, hereby makes the following Scheme.

**1. SHORT TITLE**

This Scheme may be cited as the Health Service Executive Employee Superannuation Scheme, 2010.

**2. COMMENCEMENT**

The Scheme shall be deemed to have commenced with effect from the 1st day of January 2005, which shall be known as the date of commencement.

**3. DEFINITIONS**

In this Scheme save where the context otherwise requires:

- 3.1 “Act” means the Public Service Superannuation (Miscellaneous Provisions) Act 2004, (No 7 of 2004);
- 3.2 “actual or potential beneficiary” has the meaning assigned to it by section 126(1) of the Pensions Act 1990;
- 3.3 “actual pensionable service” means service as defined in subparagraph 7.1 of this Scheme under clauses (a), (b), (g), (j), (k), (l) and (m) of that subparagraph;
- 3.4 “Establishment day” means 1 January 2005 as provided for in SI No. 885 of 2004;
- 3.5 “the Executive” means the Health Service Executive established in accordance with section 6 of the Health Act 2004;
- 3.6 “fully insured member” means a member of this Scheme who is or was before attaining the age of 66 years, insured for State Pension (Contributory) under the Social Welfare Acts;
- 3.7 “Health sector pension scheme” means a public service pension scheme which requires the approval or consent, however expressed, of the Minister for Health and Children.
- 3.8 “ill-health vesting period” means a period of at least five years whole time actual pensionable service;

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 23rd July, 2010.*

- 3.9 “Knock-for-Knock Agreement under the Local Government Superannuation Code” means an agreement under articles 279(9) and 280 of the Local Government (Superannuation) (Consolidation) Scheme, 1998;
- 3.10 “Local Authority” has the meaning assigned to it in the Local Government (Superannuation) (Consolidation) Scheme, 1998 and in addition includes any body to which schemes and regulations under the Local Government (Superannuation) Act 1980 (No. 8 of 1980) apply
- 3.11 “Local Government Superannuation Code” means any scheme or regulation made under the Local Government (Superannuation) Act 1980 (No. 8 of 1980) other than the Local Government (Superannuation) (Gratuities) Regulations, 1984 (as amended) or the provisions of Part V of the Local Government (Superannuation) (Consolidation) Scheme, 1998;
- 3.12 “member” means a pensionable employee to whom this Scheme applies;
- 3.13 “Minister” means the Minister for Health and Children;
- 3.14 “new entrant” shall be construed in accordance with section 2 of the Act;
- 3.15 “part-time employee” means an employee who works less than the standard hours of a comparable employee in a whole-time post;
- 3.16 “the Pensions Board” means the Board established pursuant to section 9 of the Pensions Act 1990;
- 3.17 “the Pensions Ombudsman” means the office of Pensions Ombudsman established by section 127 of the Pensions Act 1990;
- 3.18 “Pensions Ombudsman Regulations” means the Pensions Ombudsman Regulations 2003 to 2007 including any enactment which amends or extends any or all of those Regulations;
- 3.19 “personal rate” in relation to any Social Welfare benefit, means the rate of such benefit which is payable under the Social Welfare Acts to a single person excluding any increase that is payable on age grounds, or by virtue of the recipient living alone, or in respect of a qualified adult or child dependant, and “maximum personal rate” shall be construed accordingly;
- 3.20 “public service pension scheme” has the meaning assigned thereto in subsection 1(1) of the Act;
- 3.21 “reduced rate” in relation to any Social Welfare benefit, means the personal rate of such benefit if that rate is less than the maximum personal rate of State Pension (Contributory);
- 3.22 “Social Welfare Acts” means the Social Welfare Acts 1981 to 2009 including any enactment which amends or extends any or all of those Acts and any regulation, warrant or order made thereunder.

- 3.23 “Social Welfare Benefit” means State Pension (Contributory), State Pension (Transition), Invalidity Pension, Illness Benefit or Jobseeker’s Benefit payable under the Social Welfare Acts;
- 3.24 “State Pension (Contributory)” means the State Pension (Contributory) payable under the Social Welfare Acts;
- 3.25 “transfer value payment” means a payment calculated in accordance with such tables as are approved and in such manner as is determined by the Minister for Finance under this scheme, or the Minister for the Environment, Heritage and Local Government under the Local Government Superannuation Code;
- 3.26 “vesting period” means a period of at least two years actual pensionable service except that for any period during which a member was or is a part-time employee the service shall be reckonable in the same way as if they had worked whole-time;
- 3.27 “work-sharer” means a whole-time employee who, under an arrangement which has been approved by the Minister, works less than the standard hours of the whole-time post;
- 3.28 “years” means a figure determined by the formula  $A + B/365$  where A is the number of completed years in the period in question and B is any number of days additional to a completed year or a number of completed years in that period, and “year” shall be construed accordingly.

#### **4. MEMBERSHIP**

##### 4.1 For the purposes of this Scheme

(a) “pensionable employee” means

- (i) a person who was transferred to the Executive, pursuant to section 60 of the Health Act 2004 (No 42 of 2004) and who has served continuously since establishment day, or, transferred under a subsequent Health Act
- (ii) a person appointed before establishment day, to whom section 66 of the Child Care Act 1991 (No 17 of 1991) applies and who has served continuously since establishment day
- (iii) a person appointed on or after establishment day from such day, if any, as Section 66 of the Child Care Act 1991 applies to that person
- (iv) a person, other than a person in (i), (ii) or (iii), including the Chief Executive Officer who is employed by the Executive in a pensionable post.

(b) “pensionable post” means a post with the Executive which is declared in the Conditions of Service attaching to it to be a pensionable post

4.2 Membership of this Scheme shall not apply to persons

(a) who are in membership of a retirement benefit scheme of any body associated with the Executive, for the same period.

(b) in the case of an employee who is not a new entrant, whose actual pensionable service on attaining age 65 would be less than the vesting period, or

(c) who are under 16 years of age.

4.3 Membership shall be compulsory for all pensionable employees, other than those referred to in subparagraph 4.2.

4.4 The Executive shall decide upon the eligibility for membership of the Scheme. The Executive shall notify an employee of his or her admission to membership of the Scheme and shall furnish him or her with a copy of the terms of the Scheme.

4.5 A member who is not a new entrant may not continue in membership after he or she has attained the age of 65.

4.6 Membership of this Scheme shall not include persons transferred to the Executive pursuant to section 60 of the Health Act 2004 (No. 42 of 2004), who in accordance with the provisions of Department of Health and Children Circular 23/2005, opted out of membership of another health sector pension scheme provided they have been in continuous employment since establishment day.

## **5. STAFF TRANSFERRED UNDER STATUTE**

In accordance with Section 60(5) of the Health Act of 2004 members who were transferred from specified bodies to the Executive pursuant to Section 60 of the Health Act 2004 are entitled under this Scheme to superannuation benefits and the terms relating to those benefits which are no less favourable than those to which they were entitled under their existing superannuation scheme as at 31st December 2004.

## **6. PENSIONABLE REMUNERATION**

### **6.1 Salary**

“Salary” means the annual basic rate (or the weekly basic rate multiplied by 52.18) of remuneration payable from time to time as lawfully determined or lawfully approved by the Executive, and the Minister for Health and Children, with the consent of the Minister for Finance, excluding any sums paid in respect of overtime, commission, gratuity, special fees, travelling allowance, subsistence allowance and the like, the money equivalent of any emolument or benefit in kind (including motor car or other vehicle) or any payment toward or in respect of such emoluments.

## 6.2 Allowances

“Allowances” means such allowances in the nature of pay lawfully determined or lawfully approved by the Executive, and the Minister for Health and Children, with the consent of the Minister for Finance, which are designated as pensionable by the Executive, but excluding any sums paid in respect of overtime, commission, gratuity, special fees, travelling allowance, subsistence allowance and the like, the money equivalent of any emolument or benefit in kind (including motor car or other vehicle) or any payment toward or in respect of such emoluments.

## 6.3 Remuneration

“Remuneration” means the aggregate of salary and allowances (multiplied by 52.18 in the case of weekly allowances).

## 6.4 Net remuneration

“Net remuneration” means the amount by which remuneration exceeds twice the annual maximum personal rate of State Pension (Contributory) payable from time to time to a person who has no adult dependent or qualified children.

## 6.5 Retiring salary

“Retiring salary” means the salary of the member at the date of retirement or death where—

- (a) a member has had the same scale of salary and has been in the same grade for the last three years of his or her pensionable service, or
- (b) a member who is under 62 years of age dies in service, or
- (c) a member retires or is retired on medical grounds before 60 years of age with sufficient potential pensionable service to age 60 to avoid averaging;
- (d) in the case of a member whose actual service and potential service to the end of his or her contract of employment is less than 1 year, the rate of salary multiplied by the number of days in the contract divided by 365.

In any other case retiring salary shall be taken as the total calculated by multiplying by 1/1095 the annual rate of salary appropriate on the last day of pensionable service for each grade in which the member served during the last three years of pensionable service, and multiplying the result by the number of days of his or her employment in each grade during those years, subject to the retiring salary so taken not exceeding the annual basic rate of salary payable at the time of retirement or death. Where the pensionable service of the member is less than three years, the number of days of pensionable service shall be substituted for 1095.

**6.6 Pensionable allowances**

“Pensionable allowances” means the annual average of any allowances paid to the member calculated in accordance with the provisions of Department of Health and Children Circular 10/2008 and future amending circulars.

**6.7 Pensionable remuneration**

“Pensionable remuneration” means the aggregate of retiring salary and pensionable allowances.

**7. PENSIONABLE SERVICE**

7.1 For the purpose of calculating benefits under this scheme, pensionable service is the aggregate of—

- (a) paid service as a pensionable employee, other than service in respect of which, in accordance with the provisions of paragraph 8.1, the employee has opted to retain entitlement to preserved benefits, provided that any period during which a member was or is a part-time employee shall be reckonable in the proportion which the hours worked bear to comparable whole-time service;
- (b) actual service transferred in accordance with arrangements approved by the Minister for Finance and/or the Minister for the Environment, Heritage and Local Government;
- (c) notional service purchased by a member and transferred in accordance with arrangements approved by the Minister for Finance and or the Minister for the Environment, Heritage and Local Government;
- (d) notional service purchased by a member in accordance with provisions determined by the Executive with the approval of the Minister and the consent of the Minister for Finance;
- (e) in the case of a member in respect of whom a transfer value in respect of superannuation benefits in a former employment other than employment referred to in paragraphs 7.1 (g) and (h) of this scheme is received by the Executive such additional service as the amount of the transfer value will purchase on the basis of actuarial tables approved by the Minister for Finance;
- (f) such additional period of notional service (to be referred to as “professional added years”) as may be granted by the Executive in accordance with conditions determined by the Executive with the approval of the Minister and the consent of the Minister for Finance;
- (g) in the case of a member transferred under section 60(1) of the Health Act 2004 who has served continuously since establishment day the actual service which is reckonable under the Local Government (Superannuation) (Consolidation) Scheme, 1998;

- (h) in the case of a member transferred under section 60(1) of the Health Act, 2004 who has served continuously since establishment day service purchased by that member while a member of the Local Government (Superannuation) (Consolidation) Scheme, 1998;
  - (i) in the case of a member transferred under section 60(1) of the Health Act 2004 who has served continuously since establishment day service purchased by payment of a transfer value to the Local Government (Superannuation) (Consolidation) Scheme, 1998;
  - (j) service given by a member to whom section 66 of the Child Care Act, 1991 applies and who was appointed before the establishment day who has served continuously;
  - (k) service given by a member to whom section 66 of the Child Care Act 1991 applies and who was appointed on or after the establishment day who has served continuously;
  - (l) in the case of a member with an entitlement to preserved benefits under the provisions of the Local Government (Superannuation) (Consolidation) Scheme, 1998 from another public health sector employment, if the employee so chooses, pensionable service as a member of the Local Government (Superannuation) (Consolidation) Scheme, 1998;
  - (m) pensionable service in another Health Sector Pension Scheme other than service in respect of which, in accordance with the provisions of paragraph 8.1 the employee has opted to retain entitlement to preserved benefits.
- 7.2 (a) A member who has completed the ill-health vesting period and who retires, or is retired, on medical grounds in accordance with the conditions laid down in paragraph 10.1 of this Scheme, may, at the discretion of the Executive have a period of notional service (to be referred to as “ill-health notional service”) added to his or her pensionable service, provided that the aggregate of pensionable service and ill-health notional service does not exceed 40 years.
- (b) The ill-health notional service shall be calculated on the following basis:
- (i) members whose actual pensionable service is between 5 and 10 years will be allowed an equivalent amount of ill-health notional service, such amount of notional service not to exceed the amount of additional actual pensionable service he or she would have had if he or she served to age 65 or, if earlier, to the date on which his or her contract of employment would expire.
  - (ii) members whose actual pensionable service is between 10 and 20 years will be allowed the more favourable of:

- (I) an amount of service equal to the period by which 20 years exceeds the said actual pensionable service, the added service not to exceed the amount of additional actual pensionable service he or she would have had if he or she served to age 65, or, if earlier, to the date on which his or her contract of employment would expire; or
  - (II) 6 years and 243 days, the ill-health notional service not to exceed the amount of additional actual pensionable service he or she would have had if he or she served to age 60, or, if earlier, to the date on which his or her contract of employment would expire;
- (iii) members with more than 20 years of actual pensionable service at retirement will be allowed to add whichever is the lesser of:
- (I) 6 years and 243 days, or
  - (II) the additional actual pensionable service he or she would have had if he or she had served to age 60 or, if earlier, to the date on which his or her contract of employment would expire.
- 7.3 (a) For the purposes of this scheme, “earlier service” means the service by reference to which the benefits referred to in subparagraph 7.3 (b) were calculated.
- (b) The maximum service reckonable for benefits under this scheme is 40 years, subject in the case of
- (i) employees who have retained an entitlement to benefit under the provisions of paragraph 8.1
  - (ii) employees who are in receipt of benefit under another health sector pension scheme and,
  - (iii) employees whose pensions were suspended under the provisions of paragraph 15.3
  - (iv) employees whose pensions were abated under the provisions of paragraph 15.4 and
  - (v) employees whose pensions were abated under the provisions of paragraph 15.5
- to maximum service not exceeding the difference between earlier service and 40 years.

## 8. OPTIONAL RETENTION OF PRESERVED BENEFITS

8.1 A member who:

- (a) had previous pensionable service as a member of another health sector pension scheme in respect of which he or she is entitled to preserved benefits or
- (b) is a new entrant with an entitlement to preserved benefits payable at age 60 deriving from membership of any health sector pension scheme or
- (c) is fully insured and is entitled to preserved benefits in respect of earlier service as a member of this scheme while not fully insured

may opt to retain entitlement to the preserved benefits, subject to

- (i) payment of the preserved pension not commencing before the date on which membership of this scheme ceases and
- (ii) in the event of death in service, the deduction of the preserved death gratuity from any death gratuity payable under paragraph 9.2 (f)(i), 9.2 (f)(ii)

8.2 A member whose pension was cancelled under the provisions of paragraph 15.3, may opt for entitlement to a preserved pension based on the actual pensionable service on which the cancelled pension was based subject to payment of the preserved pension not commencing before the date on which membership of this scheme ceases.

## 9. BENEFITS

9.1 **Pension:**

- (a) Where a member, at retirement, is a part-time employee or a work-sharer, pensionable remuneration for the purposes of this subparagraph shall be deemed to be the pensionable remuneration applicable if he or she were working in a whole-time capacity.
- (b) (i) A new entrant who is fully insured and who has completed the vesting period and who retires, or is retired, after attaining the age of 65 years shall be eligible to receive a pension of an amount per annum calculated in accordance with the formula

$$[A \times C \div 200] + [B \times C \div 80], \text{ where}$$

A is

- (I) if the member's pensionable remuneration is less than or equal to 3 and 1/3rd times the annual maximum personal rate of State Pension (Contributory) payable on the last

day of the member's pensionable service, the amount of the member's pensionable remuneration; or

- (II) if the member's pensionable remuneration exceeds 3 and 1/3rd times the annual maximum personal rate of State Pension (Contributory) payable on the last day of the member's pensionable service, that part of the member's pensionable remuneration which equals 3 and 1/3rd times the said rate of State Pension (Contributory);

B is that part (if any) of the member's pensionable remuneration which exceeds 3 and 1/3rd times the annual maximum personal rate of State Pension (Contributory) payable on the last day of the member's pensionable service; and

C is the amount of the member's pensionable service, subject to a maximum of 40 years.

- (ii) A new entrant who is not fully insured and who has completed the vesting period and who retires, or is retired, after attaining the age of 65 years shall be eligible to receive a pension of an amount per annum calculated at the rate of 1/80th of his or her pensionable remuneration for each year of pensionable service.
- (c) (i) A member who is not a new entrant, who is fully insured and who has completed the vesting period and who retires, or is retired, after attaining the age of 60 years (55 years where the member is covered under the provisions of section 65 of the Mental Treatment Act 1945 and the Mental Treatment Regulations 1961) shall be eligible to receive a pension of an amount per annum calculated in accordance with the formula

$[A \times C \div 200] + [B \times C \div 80]$ , where

A is

- (I) if the member's pensionable remuneration is less than or equal to 3 and 1/3rd times the annual maximum personal rate of State Pension (Contributory) payable on the last day of the member's pensionable service, the amount of the member's pensionable remuneration; or
- (II) if the member's pensionable remuneration exceeds 3 and 1/3rd times the annual maximum personal rate of State Pension (Contributory) payable on the last day of the member's pensionable service, that part of the member's pensionable remuneration which equals 3 and 1/3rd times the said rate of State Pension (Contributory);

B is that part (if any) of the member's pensionable remuneration which exceeds 3 and 1/3rd times the annual maximum personal rate of State Pension (Contributory) payable on the last day of the member's pensionable service; and

C is the amount of the member's pensionable service, subject to a maximum of 40 years.

(ii) A member who is not a new entrant and who is not fully insured and who has completed the vesting period and who retires, or is retired, after attaining the age of 60 years (55 years where the member is covered under the provisions of section 65 of the Mental Treatment Act 1945 and the Mental Treatment Regulations 1961) shall be eligible to receive a pension of an amount per annum calculated at the rate of 1/80th of his or her pensionable remuneration for each year of pensionable service.

(d) (i) A member who is fully insured and who has completed the ill-health vesting period and who retires, or is retired on medical grounds in accordance with the conditions laid down in paragraph 10.1 of this Scheme shall be eligible to receive a pension of an amount per annum calculated in accordance with the formula

$$[A \times C \div 200] + [B \times C \div 80], \text{ where}$$

A is

(I) if the member's pensionable remuneration is less than or equal to 3 and 1/3rd times the annual maximum personal rate of State Pension (Contributory) payable on the last day of the member's pensionable service, the amount of the member's pensionable remuneration; or

(II) if the member's pensionable remuneration exceeds 3 and 1/3rd times the annual maximum personal rate of State Pension (Contributory) payable on the last day of the member's pensionable service, that part of the member's pensionable remuneration which equals 3 and 1/3rd times the said rate of State Pension (Contributory);

B is that part (if any) of the member's pensionable remuneration which exceeds 3 and 1/3rd times the annual maximum personal rate of State Pension (Contributory) payable on the last day of the member's pensionable service; and

C is the amount of the member's pensionable service, subject to a maximum of 40 years.

(ii) A member who is not fully insured and who has completed the ill-health vesting period and who retires, or is retired on medical grounds in accordance with the conditions laid down in paragraph

10.1 of this Scheme shall be eligible to receive a pension of an amount per annum calculated at the rate of 1/80th of his or her pensionable remuneration for each year of pensionable service.

## 9.2 **Gratuities**

- (a) A member who has completed at least one year's actual pensionable service but less than the vesting period and who retires or is retired on medical grounds in accordance with the conditions laid down in paragraph 10.1 of this Scheme, shall be eligible to receive a gratuity of 1/12th of pensionable remuneration for each year of pensionable service. Where a member, at retirement, is a part-time employee or a work-sharer, pensionable remuneration shall be deemed to be the pensionable remuneration applicable if he or she were working in a whole-time capacity.
- (b) A member who has completed the vesting period but who has not completed the ill-health vesting period and who retires or is retired on medical grounds in accordance with the conditions laid down in paragraph 10.1 of this Scheme, shall be eligible to receive a gratuity at the rate of 1/12th of pensionable remuneration for each year of pensionable service and, in addition, a gratuity equal to 3/80ths of his or her pensionable remuneration for each year of pensionable service, provided he or she opts in writing to accept such gratuities in lieu of any other benefit for which he or she may be eligible under this Scheme. Where a member, at retirement, is a part-time employee or a work-sharer, pensionable remuneration shall be deemed to be the pensionable remuneration applicable if he or she were working in a whole-time capacity.
- (c) A new entrant who has completed the vesting period and who retires or is retired after attaining the age of 65 shall be eligible to receive a lump sum at the rate of 3/80ths of pensionable remuneration for each year of pensionable service subject to a maximum of 120/80ths. Where a member, at retirement, is a part-time employee or a work-sharer, pensionable remuneration shall be deemed to be the pensionable remuneration applicable if he or she were working in a whole-time capacity.
- (d) A member who is not a new entrant and who has completed the vesting period and who retires or is retired after attaining the age of 60 shall be eligible to receive a lump sum at the rate of 3/80ths of pensionable remuneration for each year of pensionable service subject to a maximum of 120/80ths. Where a member, at retirement, is a part-time employee or a work-sharer, pensionable remuneration shall be deemed to be the pensionable remuneration applicable if he or she were working in a whole-time capacity.
- (e) A member who has completed the ill-health vesting period and who retires or is retired on medical grounds in accordance with the conditions laid down in paragraph 10.1 of this Scheme, shall be eligible

to receive a lump sum at the rate of 3/80ths of pensionable remuneration for each year of pensionable service subject to a maximum of 120/80ths. Where a member, at retirement, is a part-time employee or a work-sharer, pensionable remuneration shall be deemed to be the pensionable remuneration applicable if he or she were working in a whole-time capacity.

- (f) (i) If a member dies while serving, his or her legal personal representative shall be eligible to receive the greater of—
- (I) his or her pensionable remuneration, or
  - (II) the lump sum that would have been payable had the member retired on medical grounds on the date of his or her death, or
  - (III) as respects a registered employee who dies in employment after 1 September 2008 a sum not exceeding €36,164 (97.43% of the second point of the Craftworker's pay scale) until that scale reaches the sum of €40,800, thereafter, Consumer Price Index (CPI) increases will be applied to the threshold for indexation.
- (ii) If a former member who has been granted a pension and a lump sum dies and the total paid or payable on foot of the pension (including any amount which would have been payable had the provisions of paragraph 15.4 not applied in his or her case) and lump sum (including any deductions made in respect of non-periodic contributions under the Health Service Executive Spouses and Children's Contributory Pension Scheme) is less than the gratuity which could have been granted to his or her legal personal representative if he or she had died on the date of his or her retirement, his or her legal personal representative shall be eligible to receive a gratuity equal to the deficiency.

### 9.3 Preservation of Benefits — New Entrants

- (a) Where a member who is a new entrant
- (i) ceases to be a member before age 65 other than in accordance with the conditions laid down in paragraph 10.1 of this Scheme after completing the vesting period or
  - (ii) ceases to be a member before age 65 in accordance with the provisions of paragraph 10.1 of this Scheme after completing the vesting period but not the ill-health vesting period and does not opt, in writing, for the benefits of paragraph 9.2 (b),

he or she will, on attaining the age of 65, qualify under this subparagraph, for a pension and lump sum payment (which pension and lump sum are in this Scheme referred to as a “*preserved pension*” and “*preserved lump sum*” respectively), provided

- (I) he or she does not receive any other benefit in respect of that service, and
  - (II) that service is not reckoned for pension purposes by him or her in another employment under approved arrangements.
- (b) A preserved pension shall be awarded to the person concerned on and from his or her attaining the age of 65 on an application being made by him or her in that behalf. Where the person concerned dies on or after attaining age 65 without applying for the preserved pension, an amount equal to the preserved pension payable between age 65 and the date of death of the person concerned shall be payable to the legal personal representative of the person concerned on application being made.
- (c) The amount of a preserved pension shall be the amount which would have been awarded to the member concerned under subparagraph 9.1 of this Scheme if he or she had attained age 65 on the date of resignation, as increased by reference to pensions increases granted under paragraph 13 of this Scheme in the interval between the date of resignation and the date on which the member attains age 65.
- (d) If a person referred to in paragraph 9.3 (a) of this Scheme dies before attaining the age of 65, a sum (in this Scheme referred to as a preserved death gratuity”) shall be payable to the person’s legal personal representative by the Executive in respect of him or her.
- (e) The amount of a preserved lump sum or preserved death gratuity shall be the amount which would have been awarded to the member concerned under paragraph 9.2 of this Scheme if he or she had attained age 65 on the date of resignation, as increased by reference to pensions increases granted under paragraph 13 of this Scheme in the interval between the date of resignation and the date
- (i) on which he or she attains age 65, in the case of a preserved lump sum, or
  - (ii) of his or her death, in the case of a preserved death gratuity.
- (f) A preserved lump sum or preserved death gratuity shall be payable to or in respect of the person concerned on an application being made to the Executive by him or her at any time after he or she reaches the age of 65 or, in case he or she dies before reaching that age, by his or her legal personal representative. Where the person concerned dies on or after attaining age 65 without applying for the preserved lump sum, an amount equal to the preserved lump sum shall be payable to the legal personal

representative of the person concerned on application being made.

- (g) A member to whom this subparagraph applies who, on the date of his or her resignation, would be aged 55 or over may apply in writing before the date of resignation to have his or her preserved pension and preserved lump sum benefits paid with effect from the date of resignation and if the Executive agrees, those benefits shall be calculated by reference to the member's pensionable remuneration at the date of resignation and shall be payable as and from that date, but the amount of each benefit shall be reduced by reference to the member's age at date of resignation, in accordance with actuarial tables approved by the Minister for Finance.
- (h) The Executive may at its discretion pay a supplementary pension on the terms and conditions set out in subparagraph 9.5 of this Scheme.
- (i) Where a member, at retirement, is a part-time employee or a work-sharer, pensionable remuneration for the purposes of this subparagraph shall be deemed to be the pensionable remuneration applicable if he or she were working in a whole-time capacity.

#### 9.4 Preservation of Benefits — Members who are not New Entrants

- (a) Where a member who is not a new entrant
  - (i) ceases to be a member before age 60 other than in accordance with the conditions laid down in paragraph 10.1 of this Scheme after completing the vesting period or
  - (ii) ceases to be a member before age 60 in accordance with the provisions of paragraph 10.1 of this Scheme after completing the vesting period but not the ill-health vesting period and does not opt, in writing, for the benefits of subparagraph 9.2

(b) he or she will, on attaining the age of 60, qualify under this subparagraph, for a pension and lump sum payment (which pension and lump sum are in this Scheme referred to as a "preserved pension" and "preserved lump sum" respectively), provided

- (I) he or she does not receive any other benefit in respect of that service, and
- (II) that service is not reckoned for pension purposes by him or her in another employment under approved arrangements.

- (b) A preserved pension shall be awarded to the person concerned on and from his or her attaining the age of 60 on an application being made by him or her in that behalf. Where the person concerned dies on or after attaining age 60 without applying for the preserved pension, an amount equal to the preserved pension payable between age 60 and the date of death of the person concerned shall be payable to the legal personal representative of the person concerned on application being made.
- (c) The amount of a preserved pension shall be the amount which would have been awarded to the member concerned under subparagraph 9.1 of this Scheme if he or she had attained age 60 on the date of resignation, as increased by reference to pensions increases granted under paragraph 13 of this Scheme in the interval between the date of resignation and the date on which the member attains age 60.
- (d) If a person referred to in subparagraph 9.4(a) of this paragraph dies before attaining the age of 60, a sum (in this Scheme referred to as a “preserved death gratuity”) shall be payable to the person’s legal personal representative by the Executive in respect of him or her.
- (e) The amount of a preserved lump sum or preserved gratuity shall be the amount which would have been awarded to the member concerned under subparagraph 9.2 of this Scheme if he or she had attained age 60 on the date of resignation, as increased by reference to pensions increases granted under paragraph 13 of this Scheme in the interval between the date of resignation and the date
  - (i) on which he or she attains age 60, in the case of a preserved lump sum, or
  - (ii) of his or her death, in the case of a preserved death gratuity.
- (f) A preserved lump sum or preserved death gratuity shall be payable to or in respect of the person concerned on an application being made to the Executive by him or her at any time after he or she reaches the age of 60 or, in case he or she dies before reaching that age, by his or her legal personal representative. Where the person concerned dies on or after attaining age 60 without applying for the preserved lump sum, an amount equal to the preserved lump sum shall be payable to the legal personal representative of the person concerned on application being made.
- (g) A member to whom this subparagraph applies who, on the date of his or her resignation, would be aged 50 or over may apply in writing before the date of resignation to have his or her preserved

pension and lump sum benefits paid with effect from the date of resignation and if the Executive agrees, those benefits shall be calculated by reference to the member's pensionable remuneration at the date of resignation and shall be payable as and from that date, but the amount of each benefit shall be reduced by reference to the member's age at date of resignation, in accordance with actuarial tables approved by the Minister for Finance.

- (h) The Executive may at its discretion pay a supplementary pension on the terms and conditions set out in subparagraph 9.5 of this Scheme.
- (i) Where a member, at retirement, is a part-time employee or a work-sharer, pensionable remuneration for the purposes of this subparagraph shall be deemed to be the pensionable remuneration applicable if he or she were working in a whole-time capacity.

### 9.5 Supplementary Pension

- (a) Where a person who was a fully insured member is in receipt of a pension or a preserved pension under this scheme is unemployed and, due to causes outside his or her own control:
  - (i) fails to qualify for Social Welfare benefit or
  - (ii) qualifies for Social Welfare benefit at a reduced rate and
  - (iii) in the case of a person mentioned in paragraph 9.3(g) has attained the age of 65 years or
  - (iv) in the case of a person mentioned in paragraph 9.4(g) has attained the age of 60 years

then for so long as the Executive is satisfied that the preconditions set out in this subparagraph are met, the person concerned may, at the discretion of the Executive, be paid a supplementary pension under this Scheme.

- (b) The amount of a supplementary pension payable pursuant to subparagraph of this paragraph shall be the amount, if any, arrived at by the formula:

A — (B+C), where:

A is the amount of the pension or preserved pension which would be payable to the former member if he or she had not been fully insured under paragraph 9.1 of this Scheme if such pension had been calculated by reference to pensionable remuneration rather than net pensionable remuneration,

B is the amount of the pension actually payable to the former member under the said paragraph 9.1, and

C is the annual amount of the Social Welfare benefit, if any, which is payable to the former member.

#### 9.6 **Return of contributions**

In the case of a member who has not completed the vesting period

- (i) whose membership ceases otherwise than on medical grounds or death and
- (ii) who does not transfer his or her pensionable service under this Scheme to another organisation in accordance with arrangements approved by the Minister for the Environment, Heritage and Local Government and/or the Minister for Finance.

his or her contributions shall be returned to him or her less an amount equal to any income tax liability by the Executive in respect of such contributions.

### 10. **RETIREMENT ON MEDICAL GROUNDS**

10.1 Where a member retires or is retired on medical grounds, a benefit under paragraph 9.1 or 9.2 of this Scheme shall only be made where the following conditions are met:

- (a) Medical evidence must be supplied, having regard to which the Executive is satisfied that the member is incapable from infirmity of mind or body of discharging the duties of his or her post and that that infirmity is likely to be permanent. In this connection, the member must, if requested by the Executive, undergo medical examination by a registered medical practitioner nominated by the Executive.
- (b) The retirement must be wholly due to the infirmity.
- (c) The infirmity must not have been caused by the member's own fault or negligence.
- (d) The member must not—
  - (i) have made a false declaration about his or her health, or
  - (ii) have suppressed a material fact about his or her health
 when applying to take up his or her post in the Executive.

10.2 Where any or all of the above conditions are not met, subparagraph 9.3 or 9.4, as appropriate, shall apply in lieu of benefit under subparagraph 9.1 and/or 9.2

**11. PAYMENT OF PENSION OR PRESERVED PENSION**

Save as is otherwise provided in this Scheme, pensions and preserved pensions payable under this Scheme shall be paid in arrears in line with the payment of remuneration, as the Executive may determine, and shall continue throughout the life of the member.

**12. GRATUITY OR ALLOWANCE IN CASE OF INJURY**

12.1 Where a member is injured—

- (a) in the actual discharge of his or her duty, and
- (b) without his or her own default, and
- (c) by some injury attributable solely to the nature of his or her duty,

the Executive may grant to him or her, and, if within seven years after the date of the injury, he or she dies as a direct result thereof, to his or her spouse, father or mother, if wholly dependent on him or her at the time of his or her death, and to or in respect of his or her children, or any of them, such gratuity or allowance in money for life or for a limited period as the Executive may consider reasonable and as may be sanctioned by the Minister either generally or in any particular case.

12.2 Where an allowance is granted under this paragraph to, or in respect of, an injured person and there is also payable to, or in respect of him or her, all or any of the following:

- (a) any other allowance or pension rate of pay payable by the Executive,
- (b) any lump sum or gratuity so payable,
- (c) (i) any amount so payable by way of compensation under section 97 of the Social Welfare Consolidation Act 2005, or by way of injury benefit or disablement benefit under Chapter 13 of Part 2 of the Social Welfare Consolidation Act 2005,
  - (ii) old age contributory pension, retirement pension, invalidity pension, disability benefit or unemployment benefit, and
- (d) where he or she has died, any pension payable to his or her spouse under Chapter 13 of Part 2 of the Social Welfare Consolidation Act 2005,

the allowance under this article together with so much as may be equivalent to whatever is also payable as aforesaid shall not exceed five-sixths of the remuneration (inclusive of the money value of emoluments (being any apartments, rations or other perquisites in kind), if any) of the position in which he or she received the injury.

### **13. PENSIONS INCREASES**

The Executive may grant such increases in such pensions and preserved pensions under this Scheme as may be authorised from time to time by the Minister with the consent of the Minister for Finance.

### **14. CONTRIBUTIONS**

14.1 Every member shall pay a contribution as from the date of entry to the Scheme or from the date he or she took up employment with the Executive in the case of a member in the service of the Executive on the commencement date.

14.2 The contribution shall comprise

(a) in the case of a member who is fully insured,

(i) 3.5% of net remuneration, and

(ii) 1.5% of remuneration.

provided that in the case of a fully insured member who is a part-time employee or a member who is work-sharing, the contributions under sub-clause (a)(i) above shall be calculated in accordance with the formula  $A \times B \div C$ , where:

A is the amount of the contribution which would be payable by an equivalent whole-time employee,

B is the number of hours (excluding overtime) worked by the member concerned, and

C is the standard number of hours applicable to an equivalent whole-time post, and

(b) in the case of a member who is not fully insured, 5% of remuneration.

14.3 Where a member is in receipt of a reduced rate of pay because of absence from employment, the contributions in respect of that period will be calculated by reference to the rate of pay that would be payable to him or her if he or she were not so absent.

14.4 An actuarial revaluation of the scheme may be carried out from time to time if the "Minister for Finance" so decides and the Minister for Finance retains the right to vary the contributions payable by the members.

### **15. EMPLOYMENT SUBSEQUENT TO RETIREMENT OR RESIGNATION**

15.1 Where a member whose contributions have been returned to him or her under paragraph 9.6 is re-employed by the Executive in a pensionable

position, his or her previous pensionable service may be reckoned for the purpose of calculating superannuation subsequently, provided he or she refunds to the Executive the amount of the contributions including interest paid to him or her with compound interest on such amount at such rate per annum as may be specified by the Executive with the approval of the Minister and the consent of the Minister for Finance, with half-yearly rests from the date of payment to him or her. The Executive may, at its discretion, agree to accept such refunds by installments, provided interest on the basis outlined above continues to be paid on the outstanding balance.

- 15.2 Where a member whose contributions have been returned to him or her under paragraph 9.6 subsequently becomes employed in a pensionable position in which his or her previous pensionable service is capable of being reckoned under the Local Government Superannuation Code, his or her previous pensionable service may be reckoned for superannuation subsequently, provided he or she refunds the amount of the contributions including an additional sum calculated on a basis to be determined by the Minister with the approval of the Minister for Finance in respect of compound interest with half-yearly rests from the date of payment to him or her.
- 15.3 Where a member who retires or is retired on medical grounds and has been awarded a pension and lump sum or gratuity only is subsequently re-appointed as a pensionable employee:
- (a) if the member was awarded a pension on his or her initial retirement, that pension shall be suspended on his or her re-entry to membership of this Scheme, and
  - (b) at the member's option, either
    - (i) the original pension shall, on the member's subsequent retirement, be resumed at a rate based only on the member's service on initial retirement, and the member shall be awarded an additional pension based on subsequent pensionable service; or
    - (ii) the member's entitlement to the original pension shall be cancelled, and the member's service on initial retirement shall be aggregated with subsequent pensionable service for the purposes of determining pension benefit under this Scheme,
  - (c) all of the member's pensionable service shall be reckoned for the purposes of determining lump sum or death gratuity benefit under this Scheme, and the amount of any lump sum or death gratuity awarded to or in respect of the member on his or her eventual retirement or death shall be reduced by the amount of the lump sum or gratuity paid to him or her on his or her initial retirement.

(d) in clause (b) of this paragraph, “service on initial retirement” means the member's pensionable service on his or her initial retirement on medical grounds, excluding any notional service awarded under paragraph 7.1(f) or paragraph 7.2 of this Scheme.

15.4 If a pensioner under this Scheme or a person in receipt of a pension under the Local Government Superannuation Code in respect of former employment as a public health sector employee receives payment in respect of employment by the Executive, no more of the pension or preserved pension shall be paid for any period of receipt of the payment as may be specified by the Executive than so much as, with the payment, equals the pay which the person would have received in respect of that period if during it he or she:

(a) held the position in which he or she served on the last day of his or her pensionable service, but

(b) was remunerated at the rate of pay of which he or she was in receipt of on that date (including the money value of apartments, rations or other perquisites in kind), subject, however, in case changes have taken place, (or, if the position has ceased to exist would have taken place if it had not ceased to exist), in that rate, to treating that rate as being varied by taking account of so much of those changes as may be specified by the Executive.

#### 15.5 **Incentivised Scheme of Early Retirement**

If a member was awarded a pension and lump sum on retirement in accordance with the terms of Department of Health and Children Circulars 8/2009 and 2/2010, no more of the pension shall be paid for any period of membership of this scheme than so much as, with the remuneration payable during membership, equals the pay which the person would have received in respect of the period of membership if during it he or she:

(a) held the position in which he or she served on the last day of his or her pensionable service but

(b) was remunerated at the rate of pay of which he or she was in receipt on that date (including the money value of apartments, rations or other perquisites in kind) subject, however, in case changes have taken place, (or, if the position has ceased to exist would have taken place if it had not ceased to exist), in that rate, to treating that rate as being varied by taking account of so much of those changes as may be specified by the Executive.

## 16 **CESSER OR REDUCTION OF BENEFIT**

16.1 Where a member is dismissed or resigns or otherwise ceases to hold employment and has been guilty of misconduct involving a financial loss to the Executive or the State, the Executive may, at its discretion, refuse or reduce any award which might otherwise be payable under paragraph

9 of this Scheme (including a return of contributions under subparagraph 9.6) in order to make good such a loss.

- 16.2 The Executive may, at its discretion, reduce or cease paying a pension awarded under this Scheme if the pensioner has been guilty of misconduct involving a financial loss to the Executive or the State, in order to make good such a loss.

## **17 CONDITIONS GOVERNING AWARDS**

### **17.1 Declarations**

Payments of pension or preserved pension under this Scheme shall be subject to the making by the pensioner of a relevant declaration in such form and at such time as the Executive may require.

### **17.2 Proof of age**

A member must submit evidence of his or her date of birth on entry into the Scheme or before any payment of benefit can be made.

## **18. ASSIGNMENTS**

A pension or preserved pension under this Scheme may not be assigned or charged. If the pensioner becomes incapable of giving a receipt for payments due, the Executive shall have discretion to make such payments in whole or in part to such persons, including the authorities of any institution having care of the pensioner, as the Executive thinks fit, and the Executive shall be discharged from all liability in respect of any sum so paid.

## **19. DUPLICATION OF BENEFIT NOT TO BE ALLOWED**

### **19.1**

- (a) A member shall not be entitled to reckon the same period of time more than once for the purposes of a pension or gratuity, unless in the case of a gratuity, having been entitled to repay such gratuity, he or she has done so.
- (b) A member shall not be entitled to reckon the same period of time both for the purposes of this Scheme and also for the purposes of any pension scheme wholly or partly funded out of moneys provided by the Oireachtas or from the Central Fund or the growing produce of that Fund.

- 19.2 Where a member's employment with the Executive ceases (whether on retirement, death or otherwise), benefit under this Scheme shall be reduced by reference to any sum, other than one to which the prior approval of the Minister with the consent of the Minister for Finance had been obtained, which is payable to or in respect of him or her on such cesser, other than under this Scheme, by the Executive or under any

arrangement (whether by way of insurance or otherwise) to which the Executive has contributed.

## **20 CONTRIBUTIONS TO CERTAIN ORGANISATIONS**

- 20.1 Where a superannuation award is made by a local authority to any person under the provisions of the Local Government Superannuation Code and in determining the amount of the award any period of pensionable service with the Executive has been reckoned, the Executive shall, in the absence of a Knock-for-Knock Agreement under the Local Government Superannuation Code, make a single transfer value payment or a series of contributions to the local authority, as may be agreed between the local authority and the Executive, and such payment or contributions shall be in accordance with such tables or rates as may be approved by the Minister for the Environment, Heritage and Local Government.
- 20.2 Where under the Local Government Superannuation Code, superannuation contributions are returned by a local authority to a former member of this Scheme, and the amount includes a sum in respect of contributions paid under this scheme, the Executive shall, in the absence of a Knock-for-Knock Agreement under the Local Government Superannuation Code, recoup such sum to the local authority.

## **21 APPEALS**

### **21.1**

- (a) Where an actual or potential beneficiary alleges that he or she has sustained financial loss under this Scheme occasioned by an act of maladministration done by the Executive, he or she may make a complaint to the Executive and seek a determination in relation to such complaint. Where such an actual or potential beneficiary is a transferred member under 4.1(a) (i), this paragraph shall not prevent him or her from using any additional appeal provisions to which he or she is entitled by virtue of Section 60(5) of the Health Act 2004. The exhaustion of such additional appeal provisions shall be taken to have exhausted any appeal under this provision.
- (b) Where any dispute of fact or law arises in relation to an act done by the Executive under this scheme, an actual or potential beneficiary may refer such dispute to the Executive and seek a determination in relation to such dispute.
- (c) An application for a determination in relation to a complaint or dispute shall be in writing and signed by or on behalf of the actual or potential beneficiary and shall set out the particulars of the complaint or dispute in respect of which a determination is sought, including—
- (i) the full name, address and date of birth of the actual or potential beneficiary,

- (ii) the address to be used for the service of documents in connection with the complaint or dispute,
  - (iii) a statement concerning the nature of the complaint or dispute with sufficient details to show why the actual or potential beneficiary is aggrieved, and
  - (iv) such other information as the Executive may reasonably require.
- (d) The Executive in communication with the Department of Health and Children shall make a determination in relation to a complaint or dispute and notification of that determination shall be issued to the complainant in writing within three months from the date on which all the particulars specified in paragraph (c) were received.
- (e) Where a complaint is made or a dispute is referred to the Executive, the determination of such complaint or dispute shall be made by a member of the staff of the Executive in communication with the Department of Health and Children, other than the person whose action gave rise to such complaint or dispute, whose rank is no lower than that of the person whose action gave rise to such complaint or dispute.
- (f) The notification referred to in paragraph (e) shall include:
- (i) a statement of the determination,
  - (ii) a reference to any legislation, legal precedent, ruling of the Pensions Board, ruling or practice of the Revenue Commissioners or other material relied upon,
  - (iii) a reference to such provisions of this Scheme relied upon and, where a discretion has been exercised, a reference to such provisions of this Scheme by which such discretion is conferred,
  - (iv) a statement that the determination is not binding upon any person unless, upon or after the making of the determination, the person assents, in writing, to be bound by it, and
  - (v) a statement that the complainant should check whether the complaint or dispute is one in respect of which the Pensions Ombudsman has jurisdiction to investigate under section 131 of the Pensions Act 1990 and that further information can be found in an information booklet available from the office of the Pensions Ombudsman (the address of which shall be given).

For the purposes of this paragraph, a complaint or dispute means a complaint or dispute the act giving rise to which was done on or after the 14th day of April 1996.

21.2 The role of the Minister in relation to appeals under this section will be in accordance with procedures as laid down in circular letters as issued by Department of Health and Children from time to time.

**22. TERMINATION OR AMENDMENT OF SCHEME**

The Executive reserves the right to amend or terminate the Scheme at any time, subject to the approval of the Minister and the consent of the Minister for Finance and subject to giving three months' notice of impending changes to members of the Scheme. Benefits secured for a member or former member prior to the date of amendment or termination will not be affected.



GIVEN under the Seal of the Health Service Executive,  
20 July 2010.

L. DOWNEY,  
Chairperson.

The Minister for Health and Children hereby approves of the above Scheme.

20 July 2010.

MARY HARNEY,  
Minister for Health and Children.

The Minister for Finance hereby consents to the above Scheme.

20 July 2010.

BRIAN LENIHAN,  
Minister for Finance.

EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation)*

This scheme may be cited as the Health Service Executive Employee Superannuation Scheme, 2010. It provides for superannuation benefits for scheme members and covers (i) persons transferred to the Executive, (ii) persons to whom section 66 of the Child Care Act 1991 (No. 17 of 1991) applies and new appointees to the HSE since its establishment.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,  
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,  
nó tríd an bpost ó  
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,  
AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS,  
CONTAE MHAIGH EO,  
(Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)  
nó trí aon díoltóir leabhar.

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